

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

JEWISH FAMILY SERVICE¹

Employer

and

JONATHAN TUCKER, An Individual

Case 7-RD-3500

Petitioner

and

**AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, MICHIGAN
COUNCIL 25, LOCAL 1640, AFL-CIO²**

Union

APPEARANCES:

Miriam L. Rosen, Atty., of Bloomfield Hills, Michigan, for the Employer
Jonathan Tucker, pro se
James L. Neblett, of Detroit Michigan, for the Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Union appears as amended at the hearing.

Upon the entire record in this proceeding³, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Issue

The Petitioner seeks a decertification election in a unit of approximately 45 employees employed by the Employer at its facilities located at 25900 Greenfield Road, Oak Park, Michigan and 6555 West Maple Road, West Bloomfield, Michigan. The unit consists of both professional and nonprofessional employees. The parties stipulated that the unit employees in the classifications of MSW-Masters/certified and MSW-Masters/noncertified are professional employees. They further stipulated that the unit employees in the classifications of support personnel, technical, and direct service are nonprofessional employees. The only reason that this matter went to hearing is that the Union would not agree to the conduct of a *Sonotone*⁴ election whereby the professional employees vote separately on whether to be included in the overall unit. I find that a *Sonotone* election is required.

Discussion

The Employer is engaged in providing social services. The Union has represented the bargaining unit since about 1943⁵. The parties do not know if the

³ No party filed briefs. In the late afternoon on the date briefs were due, the Union requested an eight day extension for the filing of briefs. It asserted that it needed more time to attempt to secure documents from 1943, the year the Union began its representation of the bargaining unit. The extension request was denied because any such documents would not be relevant to the issue in this case. It also was noted that the request was received only 90 minutes prior to when the time for filing briefs expired, and it appeared that the extension request was not served on the other parties. Finally, without prior permission, the submission of, or reference in a brief to, documents that were not introduced at hearing, is not allowed.

⁴ *Sonotone Corp.*, 90 NLRB 1236 (1950)

⁵ Thus, it appears the unit was determined prior to the enactment of Section 9(b)(1) of the Labor Management Relations Act of 1947. Section 9(b)(1) provides that an appropriate unit shall not include both professional and nonprofessional employees unless the former vote for inclusion in such unit.

Union was voluntarily recognized or Board certified⁶. The record is silent as to whether professional employees were in the unit from the outset or, if not, when they were added to it. The record also does not indicate whether the professional employees ever voted on being included with nonprofessional employees. However, since the recognition or certification took place prior to the enactment of Section 9(b)(1), it is assumed that no such vote took place. Further, as discussed below, it does not matter whether the professional employees had such a vote. The current collective bargaining agreement was effective from April 2003 through October 31, 2005. At hearing, the Union did not present any evidence or legal argument in support of its position that the professional employees should not vote separately on whether to be included in the overall unit.

Analysis

The existing bargaining unit consists of both professional and non-professional employees. It is well established that in decertification elections, the voting unit generally must be coextensive with the recognized or certified unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *Arrow Uniform Rental*, 300 NLRB 246, 247 (1990). The Board, however, has long recognized an exception to that general rule when the existing unit consists of both professional and non-professional employees. In those situations, the Board requires, pursuant to Section 9(b)(1), that the professional employees decide by majority vote whether they wish to be included in a unit with nonprofessional employees. *American Medical Response, Inc.*, 344 NLRB No. 161, slip op. at 3 (Aug. 17, 2005) This right exists whether or not the professional employees have, on a prior occasion, been afforded such opportunity. *Id.*, citing and quoting from *Westinghouse Electric Corp.*, 116 NLRB 1545, 1547 (1956) and *Westinghouse Electric Corp.*, 129 NLRB 846, 848 (1960). *American Medical Response* involved both a decertification and certification petition. Thus, I conclude a *Sonotone* election is required.

5. In view of the foregoing, I find the following employees of the Employer **may** constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time MSW-Masters/certified employees, MSW-Masters/noncertified employees, support personnel employees, technical employees, and direct service employees employed by the Employer at its facilities located at 25900 Greenfield Road, Oak Park, Michigan and 6555 West

⁶ Prior to 1959, the Board issued all certifications of representative. The Office of Executive Secretary was contacted and it found no such certification involving Jewish Family Service during the period from 1942 to 1945.

Maple Road, West Bloomfield, Michigan; but excluding all management staff⁷, confidential employees, nurses, homemakers, drivers, translators, building personnel, fee-for-service employees, temporary employees, and guards and supervisors as defined in the Act.

The unit set out above includes professional and nonprofessional employees. However, as earlier noted, the Board is prohibited by Section 9(b)(1) of the Act from including professional employees in a unit with nonprofessional employees unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional must be ascertained as to inclusion in a unit with nonprofessional employees.

Therefore, I shall direct separate elections in the following voting groups:

Voting Group A:

All full-time and regular part-time support personnel employees, technical employees, and direct service employees employed by the Employer at its facilities located at 25900 Greenfield Road, Oak Park, Michigan and 6555 West Maple Road, West Bloomfield, Michigan; but excluding MSW-Masters/certified employees, MSW-Masters/noncertified employees, management staff, confidential employees, nurses, homemakers, drivers, translators, building personnel, fee-for-service employees, temporary employees, and guards and supervisors as defined in the Act.

Voting Group B:

All full-time and regular part-time MSW-Masters/certified employees and MSW-Masters/noncertified employees employed by the Employer at its facilities located at 25900 Greenfield Road, Oak Park, Michigan and 6555 West Maple Road, West Bloomfield, Michigan; but excluding support personnel employees, technical employees, direct service employees, management staff, confidential employees, nurses, homemakers, drivers, translators, building personnel, fee-for-service employees, temporary employees, and guards and supervisors as defined in the Act.

The nonprofessional employees (Voting Group A) will be polled to determine whether they wish to be represented by the Union. The professional

⁷ The parties stipulated that management staff consists of the Executive Director, Associate Executive Director, CFO, Department Directors, Assistant Directors, Program Directors, and Office Administrator.

employees (Voting Group B) will be asked the following two questions on their ballot:

1. Do you desire to be included with nonprofessional employees in a single unit for the purposes of collective bargaining?
2. Do you desire to be represented for the purposes of collective bargaining by American Federation of State, County, and Municipal Employees, Michigan Council 25, Local 1640, AFL-CIO?

If a majority of the professional employees (Voting Group B) vote “Yes” to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included. Their votes on the second question then will be counted together with the votes of the nonprofessional employees (Voting Group A) to determine whether the employees in the overall unit wish to be represented by the Union. If, on the other hand, a majority of the professional employees vote against inclusion, they will not be included with the nonprofessional employees. Their votes on the second question will be separately counted to determine whether they wish to be represented by the Union in a separate unit.

Thus, the unit determination is based, in part, upon the results of the election among the professional employees. However, I make the following findings in regard to the appropriate unit:

If a majority of the professional employees vote for inclusion in the unit with nonprofessional employees, I find the following single unit will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time MSW-Masters/certified employees, MSW-Masters/noncertified employees, support personnel employees, technical employees, and direct service employees employed by the Employer at its facilities located at 25900 Greenfield Road, Oak Park, Michigan and 6555 West Maple Road, West Bloomfield, Michigan; but excluding all management staff, confidential employees, nurses, homemakers, drivers, translators, building personnel, fee-for-service employees, temporary employees, and guards and supervisors as defined in the Act.

If a majority of the professional employees do not vote for inclusion in the unit with nonprofessional employees, I find the following two groups of

employees will constitute separate units appropriate for the purposes of collective bargaining with the meaning of Section 9(b) of the Act:

Unit A:

All full-time and regular part-time support personnel employees, technical employees, and direct service employees employed by the Employer at its facilities located at 25900 Greenfield Road, Oak Park, Michigan and 6555 West Maple Road, West Bloomfield, Michigan; but excluding MSW-Masters/certified employees, MSW-Masters/noncertified employees, management staff, confidential employees, nurses, homemakers, drivers, translators, building personnel, fee-for-service employees, temporary employees, and guards and supervisors as defined in the Act.

Unit B:

All full-time and regular part-time MSW-Masters/certified employees and MSW-Masters/noncertified employees employed by the Employer at its facilities located at 25900 Greenfield Road, Oak Park, Michigan and 6555 West Maple Road, West Bloomfield, Michigan; but excluding support personnel employees, technical employees, direct service employees, management staff, confidential employees, nurses, homemakers, drivers, translators, building personnel, fee-for-service employees, temporary employees, and guards and supervisors as defined in the Act.

Those eligible shall vote whether they wish to be represented for the purposes of collective bargaining by American Federation of State, County, and Municipal Employees, Michigan Council 25, Local 1640, AFL-CIO.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 25th day of November 2005.

(SEAL)

"/s/[Joseph A. Barker]."

/s/ Joseph A. Barker

Joseph A. Barker, Acting Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, MICHIGAN COUNCIL 25, LOCAL 1640, AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **3** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **December 2, 2005**. No extension of time to file this list shall be granted except in extraordinary

circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **December 9, 2005**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.